(2)

No. 00-94

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

WANDA C. PARIS Guardian of SHAWN R. PARIS
and Natural Mother of SHAWN R. PARIS
and ROBERT B. PARIS Natural Father
of SHAWN R. PARIS,

Petitioners,

v.

IRON WORKERS TRUST FUND
LOCAL NO.5,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals For the Fourth Circuit

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Respondent, Iron Workers Trust Fund Local No. 5 Health Fund, Washington, D.C. ("Trust Fund" or "Plan") finds the Statement of the Case set forth by Petitioners to be incomplete or inaccurate with respect to the following. First, the subrogation and reimbursement provisions of the Plan as well as the subrogation agreement signed by Mr. Paris and his mother are quoted only in part in the petition. Because of the importance of these documents, they have been set forth in the Appendix to this brief in opposition. Second, as the signed agreement demonstrates, Mr. Paris' former attorney, who initially represented Mr. Paris in his action against the third-party tort feasor, also signed the agreement. (*See* Respondent's Appendix at 16a.)

Third, Respondent disagrees with Petitioners' statement at page 5 of their petition regarding Mr. Paris' physical and mental condition and his future prognosis as well as the statement that such matters cannot be disputed. There is nothing in the record regarding Mr. Paris' condition. All such statements have merely been asserted by Petitioners' counsel in the Amended Petition for Apportionment filed with the District Court, in Petitioners' brief filed with the Fourth Circuit and by counsel at oral argument. There is no record evidence to support these claims nor is there any record evidence to support the contention that Mr. Paris has not been made whole. These matters were simply assumed, for purposes of the Respondent Trust Fund's summary judgment motion.

Fourth, contrary to Petitioners' assertion, the Fourth Circuit in the case below, did not reject "any contention that the 'make whole' doctrine can be incorporated in the federal common law of ERISA." (Petition at 9.) The court merely stated that it did not have to reach the issue because the doctrine was not applicable to this case where the subrogation

language was unambiguous. (Petition Appendix at 5a-6a and see discussion *infra* at 5.)

Finally, Petitioners incorrectly characterize the Fourth Circuit's decision as "recognizing the inherent injustice in its approach." (Petition as 11.) The court merely pointed out that it was aware that there were "possible" hardships when an accident victim had to reimburse a plan for his recovery from a third party. (Petitioner Appendix at 7a.)

ARGUMENT

I. THERE IS NO COMPELLING REASON TO GRANT CERTIORARI IN THIS CASE AS ALL CIRCUITS AGREE THAT THE "MAKE WHOLE" DOCTRINE CAN BE OVERRIDDEN BY PLAN LANGUAGE

This case simply does not present a compelling reason for a grant of the petition for writ of certiorari. Although there are perhaps shades of differences in how the Circuits approach and apply the concept of the "make whole" doctrine, all Circuits that have had occasion to address the issue agree that ERISA plan or contract language can override the doctrine. A review of the Circuit law confirms this unanimity.

In *Harris v. Harvard Pilgrim Health Care, Inc.*, 208 F.3d 274 (1st Cir. 2000), the First Circuit concluded that standard subrogation language in an ERISA plan that entitled the plan "to recover from a Member the value of services provided, arranged, or paid for, when the Member was reimbursed for the cost of care by another party" afforded the plan first priority even where the participant was not fully compensated for his injuries. *Id.* at 276 and 281. Although questioning whether the make whole rule should ever be adopted as an ERISA default rule, the Court also held that where the plan required, without qualification, reimbursement by the participant who secures a recovery, there should be no

"implied contingency such as the 'make whole' doctrine" read into a plan that is written in "straightforward language comprehensible by the average plan participant." *Id.* at 280.

In addressing an issue closely related to the make whole doctrine, the Third Circuit in, *Ryan by Capria-Ryan v. Federal Express Corp.*, 78 F.3d 123 (3rd Cir. 1996), rejected a claim that the court should apply a common law doctrine of unjust enrichment to reduce a recovery required to be reimbursed to an ERISA plan, under a subrogation agreement, by a pro rata share of the attorney's fees expended by the participant in collecting the recovery. The Court held that federal common law should be fashioned only when necessary to fill in a plan interstitially but not to rewrite or torture straightforward language into meanings the parties never intended. *Id.* at 127.

In *Sunbeam-Oster Co., Inc. Group Benefits Plan for Salaried and Non-Bargaining Hourly Employees v. Whitehurst,* 102 F.3d 1368 (5th Cir. 1996) the Fifth Circuit was faced with a participant who refused to reimburse the Fund from a recovery because he was not made whole. Questioning whether or not the "make whole" doctrine even applies to an ERISA plan, the Court did not have to reach that question because it found the ERISA plan subrogation language clear and unambiguous. Thus it held that a provision that gave "the Plan the right to collect money that you receive in a settlement or lawsuit..." required reimbursement notwithstanding that the participant had not been made whole. *Id.* at 1375-76.

In *Copeland Oaks and Copeland Oaks Employee Benefit Plan v. Haupt,* 209 F.3d 811 (6th Cir. 2000) the Sixth Circuit reviewed an ERISA plan subrogation provision where a participant had refused to reimburse the plan for monies collected from an insurer. The Court held that the "make whole" rule is a default rule that does not apply unless a plan is ambiguous and fails to specify both the "priority of the

funds recovered and a right to any full or partial recovery." *Id.* at 813.

In *Cutting v. Jerome Foods, Inc.*, 993 F.2d 1293 (7th Cir. 1993), the Seventh Circuit addressed a participant's claim that a subrogation agreement that provided that the "Plan shall be subrogated ... to the extent of any and all payments made or to be made hereunder by the Plan" could not be enforced where she was not made whole. *Id.* at 1295. The court held that the "make whole" doctrine is a rule of contract interpretation and a "gap filler" that may be overridden by clear language. It concluded that the company's interpretation —that the subrogation agreement disclaimed the make whole doctrine—was not unreasonable and was entitled to deference. *Id.* at 1299.

In *Waller v. Hormel Foods Corp.*, 120 F.3d 138, 139 (8th Cir. 1997), the Eighth Circuit reviewed plan language that provided that "the company shall be subrogated to all rights of recovery which you or your dependent, receiving such payment, may have against any person or organization." The Court held that the language overrode the make whole doctrine. It found that the language gave first priority to the plan and the silence of the plan on what happens if the participant obtains only a partial recovery for his injuries simply means that partial recovery is treated the same as if there is a full recovery, to wit, the plan must be reimbursed first. *Id.* at 140.

In *Barnes v. Indep. Auto Dealers Ass'n*, 64 F. 3d 1389 (9th Cir. 1995), the Ninth Circuit found that the plan subrogation provision did not apply unless the Plan actually made a payment of benefits to the participant. Since the plan had not made a payment in this case, the provision did not apply and the court determined that the make whole doctrine would be applied as a "gap filler". Since the plan did not have "the right of first reimbursement out of any recovery" the court found it appropriate to apply the make whole rule *Id.* at 1395.

In *Cagle v. Bruner,* 112 F.3d 1510 (11th Cir. 1997), the Eleventh Circuit held that the make whole doctrine is a default rule for ERISA plans under federal common law that will be applied if the plan language does not explicitly exclude it. It found that a subrogation agreement that required the participant to "reimburse the Plan in full from the proceeds of any recovery received" did not clearly reject the make whole doctrine. *Id.* at 1521.

This considerable level of agreement among the Circuits makes this a poor candidate for the Supreme Court's consideration. The differences among the Circuits are simply not sufficient, nor ripe for review.

While it is clear that not all Circuits have determined the extent to which the make whole doctrine should be adopted as federal common law, that issue is not squarely presented in this case. The Fourth Circuit did not hold that it was rejecting the make whole doctrine as part of federal common law, it simply held that it did not have to reach the issue. Thus after reviewing Circuit law including *United McGill Corp. v. Stinnett,* 154 F.3d 168 (4th Cir. 1998), which held that resort to federal common law is inappropriate when it would "threaten to override the explicit terms of an established ERISA benefit plan." *Id.* at 171, the court held that it would not resort to federal common law in this case where the Plan language was unambiguous. (Petition Appendix at 5a.) Similarly, the Fourth Circuit distinguished the Ninth Circuit's decision in *Barnes v. Automobile Dealers Ass'n of California Health & Welfare Benefit Plan,* 64 F.3d 1389 (9th Cir. 1995), pointing out that in that case the court had found no clear provision contrary to the make whole doctrine. The Fourth Circuit concluded that since the plan in this case was unambiguous it "need not consider adopting a rule similar to the Ninth Circuit's at this time." (Petition Appendix at 6a.)

Thus the Fourth Circuit left for another day whether or not the make whole doctrine should, under some circumstances,

be incorporated into federal common law. While this approach might be different from other circuits, such as the Ninth and the Eleventh Circuits, which first held that the make whole doctrine was part of federal common law and then determined whether the doctrine should be applied to the facts of the case, the result is the same. If plan or contract language is unambiguous in its preclusion of the doctrine, all Circuits would decline to impose the make whole doctrine.

II. THE PLAN LANUGUAGE IN THE INSTANT CASE IS UNAMBIGUOUS SO THERE IS NO NEED TO DETERMINE THE EXTENT TO WHICH FEDERAL COMMON LAW ENCOMPASSES THE MAKE WHOLE DOCTRINE

Petitioners argue that the Fourth Circuit erred in its finding that the Plan language in this case was unambiguous and precludes the adoption of the make whole doctrine. Apparently Petitioners argue that unless the Plan language explicitly makes reference to the "make whole" doctrine and the rejection of that doctrine a court must apply the doctrine as part of an ERISA federal common law. (Petition at 14 and 23.) Initially, it needs to be pointed out that the Fourth Circuit's interpretation of the Plan subrogation language hardly presents a compelling reason to grant a writ of certiorari. As noted above, the Fourth Circuit did not hold that it was rejecting the make whole doctrine as a valid ERISA federal common law principle but only that it would not apply it in this case where the contract language was clear. Thus the issue presented relates singularly to Respondent's Plan language and would not give the Court the opportunity to rule more broadly on the issue.

With regards to the Plan's subrogation language itself,[1] the Fourth Circuit found, after a de novo review[2], the Plan language unambiguous and noted that the Petitioners agreed:

> As the Appellants conceded at oral argument, the subrogation provision in the Fund's Plan is plain and clear. It entitles the Fund to reimbursement of the full amount of Appellants' recovery.

(Petition Appendix at 5a.) An examination of the Plan reveals, as the Fourth Circuit found, that the drafters clearly set forth the rights and responsibilities of the parties.

The Plan and subrogation agreement, the latter signed by Petitioners and their former attorney, are both very specific and unambiguous as to the rights of the parties. The Plan states that "if you [the claimant] should recover damages

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[1] Although the Plan language is referred throughout this brief and the Fourth Circuit's decision as a "subrogation" provision, it is actually in large part a reimbursement provision which requires a participant to reimburse the Plan any recovery recouped from a third-party. *See Unisys Medical Plan v. Timms*, 98 F.3d 971, 973 (7th Cir. 1996), for a discussion of the distinction.

[2] The court applied a de novo review even though it could and should have deferred to the Plan administrator's interpretation. Under this Court's case law, a court will interpret the language of an ERISA plan de novo unless the plan in question expressly grants discretionary authority to the plan administrator. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989)). If an express grant of authority is present, the plan administrator's interpretation is reviewed for an abuse of discretion. *Id.* According to the terms of the Plan, the Trustees of the Trust Fund have "full discretion and authority to interpret the terms of the Trust and the Plan of Benefits" set forth in the document. Thus the court should have deferred to the Trustees' interpretation. *See Cagle v. Bruner*, 112 F.3d 1510, 1519 (11th Cir. 1997) (ERISA fund did not act arbitrarily and capriciously in requiring beneficiary to sign subrogation agreement where interpretation of the plan's requirements was reasonable).

from an insurance company or from the other party (for example in a lawsuit), then you must reimburse the Plan for the payments it has made in connection with your injury." (Respondent's Appendix at 2a.) With respect to situations where the Trust Fund advances medical payments to the claimant pending the resolution of a lawsuit against a third party, the Plan provides:

> Once the Third Party's liability is resolved, you will be required to reimburse the Fund up to the full amount of the recovery for the full amount of loss of time benefits and/or medical benefits received. In such cases, the acceptance of benefits, by you or your dependent or someone acting on your or your dependent's behalf, constitutes an agreement by the injured person to reimburse the Fund for benefits paid up to the full amount of the recovery due to the injury or illness. By accepting benefits from the Fund, the injured person agrees that any amounts recovered by the injured person by judgments, settlement, or otherwise will be applied first to reimburse the Fund.

Id at 2a-3a. Thus, as demonstrated by the aforementioned language, the Plan clearly states that "[b]y accepting benefits from the Fund, the injured person agrees that any amounts recovered . . . by judgment settlement, or otherwise will be applied *first* to reimburse the Fund." (emphasis added).

The subrogation agreement, signed by Wanda Paris, on behalf of Shawn Paris is equally unambiguous. It provides:

> The Claimant, in consideration for payment by the Fund of medical expenses and/or weekly accident payments arising from his or her injury which constitutes good, valuable and sufficient consideration, does hereby assign, transfer and subrogate to the Fund any and all sums of money received, now due and owing to him or her or later received from a Third Party or other person,

> firm, corporation, or entity for which is referenced above.

The agreement further states,

> Any sums recovered by the Claimant from the Third Party or other person, firm, corporation or entity, either by judgement [sic] or settlement and regardless of whether such sums are designated as reimbursement for medical expenses incurred or anticipated or past or future wage losses as pain and suffering or as any other form of damages shall be applied first to reimburse the Fund.

(Respondent's Appendix at 11a-12a.)

This language could not be more specific: any money collected by the participant must be "applied first to reimburse the Fund." There is no ambiguity nor is there any gap to be filled in the language of either the Plan or the subrogation agreement. Thus, there is no need to fashion or apply any federal common law to add to or clarify the unambiguous Plan language. The Fourth Circuit was correct in its analysis.

While some courts have indicated that they would require explicit language rejecting the make whole doctrine, most of these courts were not confronted with language as clear as the above. A review of these cases, cited by Petitioners in support of their petition, confirms this critical distinction.

In *Barnes v. Indep. Auto. Dealers Ass'n*, 64 F.3d at 1389 (9th Cir. 1995), the court found that the plan subrogation language did not apply since the plan never made a payment to the participant. In light of the absence of any provision, the court then determined that it needed to address the issue of a gap filler. It applied the make-whole principle in the light of a silent plan that did not provide "the Plan the right of first reimbursement out of any recovery Barnes was able to

obtain even if Barnes was not made whole." *Barnes*, 64 F.3d at 1395; *see also Hartenbower v. Electrical Specialties Co. Health Benefit Fund*, 977 F. Supp. 875, 883 (N.D. Ill. 1997) (court reviewed plan language that provided that the plan "shall succeed to individual rights of recovery against any such third party to the full extent of the value of any such benefits" and found it unclear but suggested that a plan that states "that it has the 'right of first reimbursement'" may be sufficient to defeat make whole remedy).

Similarly, in *Cagle v. Bruner*, 112 F.3d 1510 (11th Cir. 1997), while recognizing that plans may expressly exclude application of the "make whole" doctrine, the court applied the doctrine where the plan subrogation clause simply gave the plan "the right to be reimbursed therefor through subrogation." 112 F. 3d at 1521. The court concluded that the "make whole" doctrine is overridden when the plan includes language "'specifically allow[ing] the Plan the right of first reimbursement out of any recovery [the participant] was able to obtain even if the participant were not made whole.'" *Id.* at 1522 *citing, Barnes*, 64 F.3d at 1395.[3]

In sum, Petitioners have not demonstrated that the issue presented in this case would have been decided differently if considered in any of these other *Circuits*. At most, they can argue that another Circuit *might* have interpreted the Plan language differently. This, however, is not a sound basis for a grant of a writ of certiorari, particularly where Petitioners conceded at oral argument before the Fourth Circuit that the Plan language in this case is clear and requires reimbursement in full.

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[3] *Copeland Oaks and Copeland Oaks Employee Benefit Plan v. Haupt*, 209 F.3d 811 (6th Cir. 2000), is the only case that explicitly requires Plan language to both establish the plan's priority as well as its right to reimbursement of "partial" recoveries to override the make whole doctrine.

Finally, Petitioners assert an alternative argument that even if the plan language expressly overrides the make whole doctrine, the doctrine should nonetheless be superimposed over the clear language in the form of a court-adopted equitable policy as a proportionate means of dividing the recovery. (Petition at 23.) In other words, Petitioners argue that neither an insurer nor a plan, under ERISA federal common law, should be able to override the "make whole" doctrine.

This argument is advanced despite the fact that, with few exceptions, both federal and state courts have consistently found that an insurance contract or plan can preclude the application of the make-whole doctrine and require full reimbursement notwithstanding only a partial recovery. Indeed, in *Shelter Insurance Companies v. Fohlich,* 243 Neb. 111, 498 N.W.2d 74 (Neb. 1993), cited by Petitioners to support their unique theory, the state court recognized that an insurance policy could override the make whole doctrine. *Id.* at 122. In reaching this conclusion the court commented:

> research indicates that that nearly every [state] appellate court that has considered the question has recognized that unless an insurance policy contains a provision to the contrary, an insurer's right to recover under a subrogation clause of an insurance policy requires that the insured must have been fully compensated for the loss covered by the policy.

Id. at 121.[4] Thus Petitioners asked the Court to accept this case to apply a principle adopted by no federal

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[4] Although Petitioners cite to one state court decision where, through its silence with regard to the ability of insurance policies to override the make whole doctrine, they assert it supports their argument, this is not the whole story. *See* Petition at 25 and the citation to *Rimes v. State Farm Mutual Automobile Insurance Co.,* 106 Wis.2d 263, 316 N.W.2d 348 (Wis. 1982). In *Ninas v. State Farm Mutual Automobile Insurance Co.,* 220 Wis.2d 869, 584 N.W.2d 545 (Wis. Ct. App. 1998), the Wisconsin

court and few, if any, state courts.[5] This request should be denied.

CONCLUSION

For the foregoing reasons, the Court should decline to grant a writ of certiorari in this case. Petitioners have failed to present any compelling reason for review. At most, Petitioners quibble over the Fourth Circuit's review and interpretation of an ERISA plan language; they would simply interpret it differently. This forms no basis for review.

Respectfully submitted,

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appellate court recognized that ERISA plans are not subject to state law and that the make whole doctrine is used in these class of cases only as a "default" rule. *Id.* at 875.

[5] Moreover, Petitioner's attempts to engraft the most restrictive insurance contract principles it can find onto ERISA plans is misguided. As the Fourth Circuit recognized, ERISA funds are very different from insurance contracts and "[a]pplying the same doctrines and rules of construction to ERISA contracts... would frustrate the purposes of ERISA. (Petition Appendix at 5a); and *see Waller v. Hormel Foods Corp.*, 120 F.3d 138, 140 (8th Cir. 1997) ("there is good reason not to read ERISA plans like insurance policies.")

APPENDIX

Iron Workers Trust Fund
Local No. 5
Summary Plan Description

AMENDMENT TO THE IRON WORKERS
LOCAL UNION NO. 5 TRUST FUND

The Trustees of the Iron Workers Local No. 5 Trust Fund hereby amend the Plan as follows:

The "SUBROGATION OF THIRD PARTY—ACCIDENT CLAIMS" provision at page 57 of the current Plan shall be amended to provide for the following:

SUBROGATION OF THIRD PARTY—ACCIDENT CLAIMS

If you or one of your dependents are involved in an accident or sustain an illness or injury for which a Third Party might be liable to you for medical expenses normally covered by this Plan, the Fund will only pay the portion of medical and loss of time benefits not covered by any recovery from the Third Party. In the case of medical expenses, you will. not receive benefit payments from this Fund for such illness or injury until the Third Party's liability for these expenses is finally resolved through settlement or court determination. Following the resolution of the Third Party's liability, the Fund will pay medical expenses normally allowed under the Plan only to the extent monies have not been paid by the Third Party. The Fund will take into account all amounts paid by the Third Party regardless of how the amounts are characterized.

An example of this would be if an employee were injured in an automobile accident which was the other driver's fault. The Fund would pay no medical expenses pending the outcome of the resolution of the other driver's liability. If the employee eventually received

$3500 from the other driver or his insurance company, but the medical benefits related to the accident which would have been paid by the Plan totalled $5000, the Fund would pay $1500, the difference between the total medical benefits and the amount received from the other driver.

If the Plan does pay covered benefits prior to the resolution of a third party's liability such as in the case of weekly loss of time benefits, payment involving hardship or mistaken payment, you must reimburse the Fund. If you should recover damages from an insurance company or from the other party (for example, in a lawsuit), then you must reimburse the Plan for the payments it has made in connection with your injury. If you are injured by another party, as a condition of receiving benefits from the Fund, you are required to sign a form acknowledging the Fund's right to recover. The Fund's subrogation right is established by the Plan and not by the form. In the event you receive benefits in such a case, the Fund's subrogation interest in your recovery is governed by the terms of the Plan whether or not you have signed a form.

The Trustees, in their sole discretion, may determine that an exception may be made to the policy of non-payment of benefits pending resolution of the Third Party's liability because of compelling circumstances involving hardship.

In the case of weekly loss of time benefits, the Fund will pay these benefits if you are entitled to them under the terms of the Plan during the pendency of the resolution of the Third Party's liability.

Once the Third Party's liability is resolved, you will be required to reimburse the Fund up to the full amount of the recovery for the full amount of loss of time benefits

and/or medical benefits received. In such cases, the acceptance of benefits by you or your dependent or someone acting on your or your dependent's behalf constitutes an agreement by the injured person to reimburse the Fund for benefits paid up to the full amount of the recovery due to the injury or illness. By accepting benefits from the Fund, the injured person agrees that any amounts recovered by the injured person by judgment, settlement or otherwise will be applied first to reimburse the Fund. Amounts recovered by the injured person in excess of benefits paid by the Fund are the separate property of the injured person.

By accepting benefits from the Fund, the injured person agrees to notify the Fund promptly in the event suit is filed to recover amounts in connection with the injury and agrees to notify the Fund promptly in the event the injured person or someone acting on his or her behalf receives payments from any source for claims related to the injury. By accepting benefits from the Fund the injured person agrees that neither the injured person nor anyone acting on behalf of the injured person will settle any claim relating to the accident or illness without the written consent of the Fund.

In the event an injured person accepts benefits from the Fund and amounts are recovered from claims arising from an accident or illness, the amounts recovered are assets of the Fund by virtue of the Fund's subrogation interest. Such Fund assets may not be distributed without a release from the Fund of its subrogation interest.

In the event monies are recovered and the Fund is not reimbursed to the extent of its subrogation interest in accordance with these Plan provisions, the Fund may bring suit against the injured person, insurers and any recipients of the Fund assets improperly distributed without the consent of the Fund. The Fund may recover

benefits paid on behalf of the injured person by treating such benefits as an advance and deducting these amounts from benefits which become due to the injured person and his or her immediate family until the Fund's subrogation interest is recovered. Such benefits may be deducted from amounts due to third parties who have provided medical services despite any certification of coverage which the Plan may have given to such providers.

When you file a claim for injuries or an illness resulting from an accident or for which a Third Party may be liable, you are obligated to provide the Fund with this information. The Fund Office may request further information about the circumstances of the illness or injury. If you receive benefits prior to the resolution of the Third Party's liability, such as loss of time benefits, you will be required to sign an Acknowledgement of these Plan provisions.

The "SUBROGATION NOTICE" provision at page 62 of the current Plan shall be deleted in its entirety.

The "SUBROGATION FORM" at page 63 of the current Plan shall be deleted in its entirety and replaced with the following ACKNOWLEDGEMENT:

IRON WORKERS LOCAL NO. 5 TRUST FUND
ACKNOWLEDGEMENT OF PLAN PROVISIONS

I hereby acknowledge the subrogation provisions of the Iron Workers Local no. 5 Trust Fund. The rights of the Fund and the obligations of the injured party are set forth fully in the Iron Workers Local No. 5 Summary Plan Description but are summarized below:

1. The Fund will pay benefits in accordance with the Plan for covered medical expenses resulting from an illness or injury sustained by me which is caused directly

or indirectly by another party. I understand that medical benefits under the Plan will not be paid by the Fund until the liability of all potentially responsible third parties is determined. I understand that once the third party's liability is resolved, the Fund will pay medical expenses normally allowed under the Plan only to the extent monies have not been paid by the third party. The circumstances surrounding this illness or injury are described in the attached Information Sheet.

2. I acknowledge that under the terms of the Plan, the acceptance of benefits by me for an illness or injury caused directly or indirectly by another party constitutes an agreement by me to reimburse the Fund for benefits paid up to the full amount of any recovery due to the illness or injury. By accepting benefits from the Fund, I agree that any amounts recovered by judgment or settlement regardless of how the amounts recovered are characterized are Plan assets and will be applied to reimburse the Fund.

3. I acknowledge that under the terms of the Plan, the acceptance of benefits by me constitutes an agreement by me to notify the Fund promptly if suit is filed to recover amounts in connection with an illness or injury for which the Fund has paid benefits, or if I receive payment from any source for claims related to such illness or injury. By accepting payments from the Fund I agree that neither I nor anyone acting on my behalf will settle any claim relating to the illness or injury without the written consent of the Fund.

4. I acknowledge that under the terms of the Plan, if monies are recovered and the Fund is not reimbursed to the extent of its subrogation interest, the Fund may bring suit against me and/or any insurers and/or recipients of the Fund assets improperly distributed without the consent of the Fund. The Fund may also recover benefits

paid on my behalf in connection with such illness or injury by treating such benefits as an advance and deducting such amounts from Plan benefits which may become due to me or any member of my immediate family until the subrogation interest is recovered.

The Plan's right to seek reimbursement from me for payments it has made in connection with my illness or injury for which I recover from another party is governed solely by the provisions of the Plan itself and not by this acknowledgement

Name of Injured Party Signature

Date: _____

The GENERAL EXCLUSIONS at page 54 of the Plan shall be amended as follows:

(23) Medical expenses or charges for which a third party may be liable during the pendency of the resolution of the third party's liability.

(24) Medical expenses or charges for which a third party is liable to the extent the participant or dependent has received monies from a third party in connection with an accident or illness.

Adopted: May 19, 1992

Effective:

May 19, 1992

UNION TRUSTEES	EMPLOYER TRUSTEES
/s/ _____	/s/_____
/s/ _____	/s/_____
/s/ _____	/s/_____

Date 07-10-96

Participant's Name: Shawn B Paris SS# 218-15-2232

Address: 7810 Clark Rd D-73

Jessup Md 20794 Age 02-03-75

Patient: Shawn Date of Accident 06-25-96

Dear Member :

YOU RECENTLY FILED A CLAIM FOR MEDICAL BENEFITS ARISING FROM A NON-WORK RELATED ACCIDENT. IN ORDER TO PROPERLY PROCESS YOUR CLAIM, WE NEED THE FOLLOWING INFORMATION:

1. Give a full description of the accident and how you were involved: *The vehicle driven by Andrew Jaecks failed to yield the right of way when entering onto Quarterfield Road causing the motorcycle driven by Mr. Paris to collide into it.*
2. Give date, time and location of accident: *6/25/96 around 8 p.m. location was Quarterfield road near the entrance to the parking lot of the Chesapeake Medical Center in Anne Arundel County,*
3. Give the name and address of the other party involved in the accident: *Andrew Brenton Jaecks, 1646 Isabella Court, Millersville, Md 21108*
4. Give the other party's insurance company's name, address, telephone number, policy and claim number: *State Farm Mutual Insurance Company-policy*

#3117119C2320; claim #20-2966-439. telephone (301)622-7315.

5. Give the name of your insurance company: *State Farm Insurance Company policy #8024680-Fl-220.*

6. If you have engaged an attorney to represent you, please give his/her name, address and telephone number: *David M. Simpson and Donald P. Mclaughlin, 9111 Edmonston Road. Suite 402, Greenbelt, MD 20770 (301) 474-2814.*

SUBROGATION NOTICE

The Plan does not provide benefits to the extent of any recovery from a third party. The Health Fund is subrogated to the extent of any recovery that you obtain from third party if benefits have been previously paid by the Fund. If the Fund learns that there is a possibility of a complete recovery from a third party, you are required to complete the attached Assignment and Subrogation Agreement as a condition of the payment of the benefits.

FOR INSTANCE IF YOU ARE INJURED IN AN AUTOMOBILE ACCIDENT OR OTHER ACCIDENT FOR WHICH A THIRD PARTY IS LIABLE TO PAY YOU DAMAGE, THEN THE HEALTH FUND MAY DEDUCT FROM YOUR BENEFITS THE AMOUNT OF ANY RECOVERY FROM THE THIRD PARTY.

You are obligated to cooperate with the Fund in the enforcement of its subrogation rights. This means that you need to keep the Trust Fund Office informed of any accidents or illnesses for which you are claiming damages from a third party.

It is recognized that legal proceedings to recover from a third party can take a long time and are not always successful in the end. For this reason, the Fund will advance benefits on your behalf under a reimbursement/subrogation agreement. By signing this agreement, you agree that if you are successful in your claim against the third party, the Fund must be reimbursed.

Under the Fund's subrogation provision, you have the following obligations:

1. To show the Subrogation Agreement to your attorney if you retain an attorney to represent you in your claim. The attorney must sign the Subrogation Agreement or all benefit payments will cease.

2. Notify the Fund Office immediately if you file suit.
3. To take such action and cooperate with Plan representatives as necessary or appropriate to recover from any third party, as damages, those payments made by the Plan.
4. Any money recovered from third persons and paid by the Plan must be paid immediately to the Plan.
5. To not do anything to impair, prejudice, or discharge the Plan's right of subrogation.

Please contact the Fund Office it you have any questions about subrogation.

Assignment and Subrogation Agreement

This agreement is made between Shawn Robert Paris who shall be referred to in this Agreement as the "Claimant," and the Ironworkers Local No. 5 Trust Fund which as an Office at 6196 Oxon Hill Road, Suite 500, Oxon hill, Maryland 20745 and which shall be referred to in this Agreement as at the "Fund."

1. The Claimant asserts that the Fund is liable to Claimant pursuant to the provisions of the Health Plan for medical expenses incurred and/or weekly accident and sickness benefits paid following injuries sustained by the Claimant in an accident which occurred on June 25, 1996 in the County of Anne Arundel State of Maryland

2. The Claimant may make a settlement with or proceed in court against a third party or parties (who shall be referred to collectively as "Third Party") alleging that the injury was caused under circumstances which create a legal liability for the Third Party to pay damages to the Claimant.

3. The plan does not provide benefits for any injury to the extent of a recovery by Claimant from the Third Party or other person, firm, corporation or entity for claims arising from or related to the injury to Claimant which is referenced above.

4. The Claimant, in consideration for the payment by the Fund of medical benefits and/or weekly accident and sickness benefits arising from his or her injury which constitutes good, valuable and sufficient consideration, does hereby assign, transfer and subrogate to the Fund any and all sums of money received, now due and owing to him or her or later received from a Third Party or other person, firm, corporation or entity for which is referenced above.

Any sums recovered by the claimant from the Third Party or other person, firm, corporation or entity, either by judgment or settlement and regardless of whether such sums are designated as reimbursement for medical expenses incurred or anticipated or past or future wage losses as pain and suffering or as any other form of damages shall be applied first to reimburse the fund. Sums received by judgement or settlement in excess of the amount necessary to reimburse the Fund for all payments made or to be made in the future by the Fund relating to the injury to the Claimant may be retained by the Claimant as his sole property. The Fund shall not be responsible for any of the Claimant's attorney's fees or the costs of Claimant's litigation.

5. Notwithstanding any provisions of this Agreement to the contrary, it is understood and agreed that the Claimant will retain as his or her sole property any monies received or to be received by the Claimant from any source other than the Fund if such monies are received pursuant to a policy of insurance for which the Claimant or any member of the Claimant's immediate family has paid premiums. However, this shall not prevent coordination of medical benefits provided by the Fund with benefits provided by any other group health plan covering Claimant.

6. The Claimant authorizes the Fund to claim and receive any amounts hereby assigned, or to which the Fund is subrogated hereby, directly from any party liable to the Claimant and hereby directs such party to make such payment directly to the Fund upon presentation of a copy of this Agreement.

7. The Claimant agrees to notify the Fund promptly in writing if suit is filed by the Claimant or on Claimant's behalf against any Third Party or other

person, firm, corporation or entity. The Claimant also agrees to notify the Fund promptly if the Claimant receives any award as a result of litigation or if the Claimant receives payment from any source whatsoever for claims arising from or related to the injury to the Claimant except as provided in paragraph 5 of this Agreement.

8. The Claimant represents that no settlement has been made by the Claimant or on Claimant's behalf with or release given to any Third Party or other person, firm, corporation or entity against whom a claim may lie in connection with the injury to Claimant and that no such settlement will be made or release given by the Claimant or on Claimant's behalf without prior notice to and written consent from the Fund.

9. The Claimant agrees to notify the Fund of the name of any attorney retained by Claimant in connection with Claimant's injury and to notify the attorney of the requirements of this Agreement. In the event any attorney retained by Claimant refuses to execute the Statement By Claimant's Attorney which is part of this Agreement, the Fund will pay no further benefits until all of Claimant's claims in connection with the injury have been resolved and Claimant's recovery has been determined. At that time the Fund will pay benefits pursuant to the terms of the Plan to the extent that such benefits exceed Claimant's gross recovery , if any.

10. The Claimant agrees that if he or she fails to comply with any provision of this Agreement that the Claimant shall be responsible for any costs or attorneys' fees incurred by the Fund to enforce this agreement and further agrees to pay interest on any amounts owed to the Fund pursuant to this

Agreement at the rate set forth in Plan documents or, if no such rate is set forth, at the rate provided in Section 6621 of the Internal Revenue Code. Such interest shall be compounded annually. The Claimant also agrees that the Fund may collect amounts due to the Fund pursuant to this Agreement by offset against future benefits due to Claimant and that such offset may be lieu of or in addition to any court proceeding by the Fund.

11. If any paragraph, section or clause of this Agreement is held to be illegal by a court of competent jurisdiction, that part of the Agreement shall be without force or effect. All other provisions of this Agreement Shall remain in full force and effect.

Claimant's Name *Shawn Robert Paris*

Address *7810 Clark Rd D73 Jessup, Md 20794*

County of Residence

Telephone Number *(410) 596-0785*

Signature /s/ _____

(If Claimant is a minor this Agreement must be signed on Claimant's behalf by Claimant's parent or legal guardian)

Date *9/20/96*

Statement By Participant

(To be completed if the Claimant is someone other than the Participant).

I state that I am a Participant in the Ironworkers Local No. 5 Trust Fund and that the above named Claimant is eligible for benefits from the Plan as my dependent. I have read the Agreement between the Claimant and the Ironworkers Local No. 5 Trust Fund and consent to its terms.

I agree that if any amounts are recovered by or on behalf of Claimant that are required to be paid to the Fund pursuant to this agreement and such amounts are not paid to the Fund that the Fund may take action against me to collect the amounts recovered by or on behalf of the Claimant. The action by the Fund may include offsetting the amount due to the Fund against future benefits due to me and my dependents until the amount due to the Fund is repaid in full or taking legal action against me. I agree to pay any costs or attorneys' fees incurred by the Fund in its efforts to collect amounts due under this agreement from Claimant or from myself. I agree to pay interest on amounts owed to the Fund pursuant to this Agreement at the rate provided in Plan Documents or if no such rate is provided, at the rate provided in Section 6621 of the Internal Revenue Code. Interest shall be compounded annually.

Name of Participant *Shawn Robert Paris*

Address of Participant *7810 Clark Rd. D73, Jessup Md 20794*

Phone Number *(301) 596-0785*

Social Security Number of Participant *218-15-2232*

Signature of participant */s/ Wanda C. Paris*
as guardian of Shawn Paris

Date *9/20/96*

Statement by Attorney Representing Claimant

I acknowledge the terms of the Agreement between the Claimant and the Local No. 5 Iron Workers Trust Fund and agree to be bound by its terms in representing the Claimant in connection with any claim related to or arising out of the *injury which is the s*ubject of this Agreement

Attorney's Signature */s/ David M. Simpson*

Date *10/1/96*